

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOHN DOE 1, JOHN DOE 2, JANE DOE  
1, JANE DOE 2, JANE DOE 3, and all  
persons similarly situated,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT  
OF CORRECTIONS, and STEPHEN  
SINCLAIR, Secretary of the Department  
of Corrections, in his official capacity,

Defendants,

and

BONNEVILLE INTERNATIONAL INC.,  
a Utah Corporation d.b.a. KIRO RADIO  
97.3 FM; THE MCCLATCHY  
COMPANY, LLC, a California Limited  
Liability Company d.b.a. THE TACOMA  
NEWS TRIBUNE; and ANDREA  
KELLY, an individual,

Interested Parties.

NO. 4:21-CV-5059-TOR

ORDER DENYING MOTION TO  
INTERVENE



1 vigorously participate in social, legal, and policy debates over matters of  
2 significant public concern (such as whether, or under what conditions, males  
3 should be housed in women's prisons). *Id.* She argues that the DOC presumably  
4 has no vested interest in whether records ultimately are disclosed to the public but  
5 merely has an interest in obeying the law and fulfilling its duties under the PRA.  
6 *Id.* For these reasons, Kelly contends she is entitled to intervene as a matter of  
7 right, granting her status equal to that of an original party to the action, including  
8 the right to respond to Plaintiffs' complaint and oppose pending motions.

9 The foundation for Kelly's standing to become a party to this suit is that on  
10 March 19, 2021, she submitted a request to the DOC for public records under the  
11 PRA seeking the following:

- 12 1. The number of transgender individuals currently incarcerated  
broken out by facility location.
- 13 2. Number of incarcerated individuals who have been transferred from  
a men's facility to a women's facility since January 1, 2021.
- 14 3. The number of male incarcerated individuals who identify as  
female, non-binary or any other gender identity who are currently  
15 housed at a Women's prison facility.
- 16 4. The number of incarcerated individuals who have transferred from  
a Women's facility to a Men's facility since January 1, 2021.
- 17 5. The number of female incarcerated individuals who identify as  
male, nonbinary or any other gender identity who are currently housed  
18 in a Men's prison facility.

19 ECF No. 32 at 13. While the DOC notified Kelly that due to this lawsuit DOC  
20 would not be producing any responsive records until the court rules on whether to

1 grant a preliminary injunction, it answered all of her PRA requests in its public  
2 filing of Defendants’ Objection/Response to Motion for Preliminary Injunction,  
3 ECF Nos. 32 at 6-8; 33 at ¶¶ 9-13.<sup>1</sup> The Court sealed certain documents attached  
4 to the Declarations filed by Defendants, but those documents were not requested  
5 by Kelly; she only requested aggregate numbers, which she has now received. *See*  
6 ECF No. 46.

7 Article III, § 2, of the Constitution confines federal courts to the decision of  
8 “Cases” or “Controversies.” *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 64,  
9 (1997). Standing to sue or defend is an aspect of the case-or-controversy  
10 requirement. *Id.* (citing *Northeastern Fla. Chapter, Associated Gen. Contractors*  
11 *of America v. Jacksonville*, 508 U.S. 656, 663–664 (1993) (standing to sue);  
12 *Diamond v. Charles*, 476 U.S. 54, 56 (1986) (standing to defend on appeal)). To  
13 qualify as a party with standing to litigate, a person must show, first and foremost,  
14 “an invasion of a legally protected interest” that is “concrete and particularized”  
15 and “actual or imminent.” *Id.* (citations omitted). An interest shared generally  
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17 <sup>1</sup> The aggregate numbers Defendant disclosed in its filings are contained in  
18 the public record and may be used by all. However, the certain documents  
19 accompanying those aggregate numbers which were sealed by the Court are not  
20 matters of public record and shall not be disclosed or disseminated further.

1 with the public at large in the proper application of the Constitution and laws will  
2 not do. *Id.* (citations omitted).

3 Here, Kelly has received the answers to her PRA request and concedes that  
4 the “DOC presumably has no vested interest in whether records ultimately are  
5 disclosed to the public but merely has an interest in obeying the law and fulfilling  
6 its duties under the PRA.” ECF No. 41 at 2. Because Kelly has no concrete stake  
7 in this lawsuit, she lacks Article III standing. *See Thole v. U. S. Bank N.A.*, 140 S.  
8 Ct. 1615, 1618–19 (2020).

9 Accordingly, neither mandatory nor permissive intervention is appropriate.

10 **ACCORDINGLY, IT IS HEREBY ORDERED:**


11 Andrea Kelly’s Motion to Intervene and for Procedural Relief, ECF No. 41,  
12 is **DENIED**.

13 The Clerk of Court is directed to terminate Andrea Kelly as an Interested  
14 Party in the docket of this case.

15 The District Court Executive is directed to enter this Order and furnish  
16 copies to all counsel of record.

17 DATED May 17, 2021.



  
THOMAS O. RICE  
United States District Judge